

## **Executive Decision Making**

### **Report by the Monitoring Officer**

#### **1.0 Summary**

- 1.1 Requirements relating to Executive Decision Making are, in large part, provided for in legislation. The Councils have set out procedures relating to such decision making in their Constitutions to ensure compliance with statutory requirements, the principles of decision making, and the principles for those holding public office, whilst retaining agility, transparency and accountability in the process.
- 1.2 Procedures for Executive decision making may be found in The Executive Procedure Rules which can be found in Part 4 of each Council's Constitution. Those rules have been reviewed and various proposals for amendment are suggested by the Monitoring Officer.
- 1.3 This report seeks the Leaders' comments upon the proposals for change. Thereafter a report will be taken to the Joint Governance Committee, incorporating the comments of the Leaders, asking that they make a recommendation to each Council for the new Executive Procedure Rules to be adopted to become part of each Council's Constitution from the date of the Annual Council Meetings in 2017.
- 1.4 A copy of the proposed revised Executive Procedure Rules for Adur District Council can be found at Appendix 1 to this report and for Worthing Borough Council at Appendix 2.

#### **2.0 Background**

- 2.1 Executive decisions are routinely made by the Executive Collectively (e.g. at Executive meetings), by the Executive sitting with another body (e.g. Joint Strategic Committee), by an Executive Member with the appropriate delegation from the Leader of the Council, and by Officers with the appropriate delegation.
- 2.2 Specific legislation relates to Executive decisions which may be Key, or contain either Exempt or Confidential information. Subject to urgency provisions set out in the Access to Information Rules, such decisions must be included on the Councils' forward plans to provide 28 days' notice before the decision may be made. This is the case regardless of whom the decision maker, or decision making body, may be and therefore applies equally to Officer Executive Key, Exempt or Confidential decisions as to such Member decisions.

- 2.3 There are statutory requirements relating to the earliest date upon which an Executive decision may be made. Where a decision is Key, Exempt or Confidential it cannot be made (other than in very limited circumstances) until the matter has been published on the forward plan for at least 28 days. Further the decision cannot be made until the expiry of 5 clear working days after the date of publication of the Officer report. The time period for the forward plan and publication of the report can run concurrently.

However there are no statutory requirements governing the timescale in which the decision should be made. In the case of decisions of the Executive as a whole, this is governed in practice by the schedule of meetings, with the ability to hold additional meetings as required. But for Individual Executive Member decisions, it is hoped that greater speed and agility is gained in the decision making process as there is no requirement to call a meeting or publish an agenda. This agility is lost if the decision maker fails to make the decision in a timely manner. It is therefore proposed in the revised rules that Individual Executive Member decisions should be made within 14 days of the earliest date that the decision could be made. It is not proposed that this be a mandatory rule as flexibility is required depending on the specific decision to be made, and in particular any consultation appropriate.

- 2.4 Joint Executive decision making is governed by the Councils' Joint Committee Agreement between Adur District Council and Worthing Borough Council. Paragraph 4.2 of the Joint Committee Agreement establishes the process for the taking of decisions jointly by Individual Executive Members from different Authorities. It provides that where a decision relating to an Executive function falls within the portfolio of a single Executive Member and relates to a joint service, the relevant Individual Executive Member report shall be sent simultaneously to the Individual Executive Member for each Council. The two Executive Members are required to consult with one another prior to the making of the decision.

In practice therefore, Officers should send Individual Executive Member reports to the relevant Executive Member for each Council, provided the matter relates to something within a joint service. It is now the case that almost all of the Councils' services are joint, with the exception of Adur District Council's Adur Homes Service and parts of Worthing Borough Council's Culture and Bereavement Services.

Compliance with this provision of the Joint Committee Agreement will result in an increased number of Individual Executive Member reports and there will be circumstances when the Individual Executive Member from one Authority, considers it prudent to abstain from the decision making process, if the matter in reality, despite falling under a joint service, primarily relates to the business of the other Authority.

The Joint Committee Agreement provides that where the two Individual Executive Members from different Authorities agree on the decision to be made, then it is to be made; where one abstains, the decision of the other will stand and where there is not agreement, the report will be referred to the Joint Strategic Committee for determination.

- 2.5 Decisions taken by Individual Executive Members jointly (even if one Executive Member abstains) that are subject to call-in, will be considered by the Joint Overview and Scrutiny Committee.

### **3.0 Proposals**

- 3.1 The revised procedure rules:

- emphasise the need for compliance with the 28 days' notice afforded by the Councils' forward plans.
- sets out the procedures for an individual decision maker who may have a conflict of interest in the decision to be made.
- clarifies that the Leader may withdraw a delegation of an Executive function to a Member or Officer at any time, whether temporarily for a particular decision or permanently.
- Explains the difference between exempt and confidential information in Executive decision making and the rights of the public to have access to Executive meetings and copies of Executive reports.
- References the principles of decision making set out in Article 12 of the Constitution.
- Sets out the business which must be included at meetings of the Executive.
- Sets out the information which must be included in written reports for Executive decision makers.
- Sets out the information which must be included in the minutes or record of decision following an Executive decision.
- Sets out the timescales for making Executive decisions, publishing minutes and records of decisions and for implementation of such decisions.

### **4.0 Legal**

- 4.1 The Local Authorities (Functions and Responsibilities) (England) Regulations 2000 establishes the functions which may be Executive, cannot be Executive and which are a matter of Local Choice. Part 3 of the Councils' Constitutions set out the determination for Adur District Council and Worthing Borough Council as to Local Choice functions.
- 4.2 Part 3 of the Councils' Constitutions set out the Executive delegations by the Leader to his Individual Executive Members and specifies their portfolios.
- 4.3 Part 4 of the Councils' Constitutions contain the Scheme of Delegations to Officers and includes Executive functions delegated to Council Officers.
- 4.4 The Joint Committee Agreement between Adur District Council and Worthing Borough Council sets out Executive functions that have been delegated to the arena of joint decision making between the two Authorities.
- 4.5 The Local Government Act 1972 makes provisions as to the publication of reports and agendas, exempt and confidential information, and public access to agendas, reports and meetings.

4.6 The Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 set out requirements as to the Council's Forward Plan.

## **5.0 Financial implications**

5.1 There are no financial implications arising from this report.

## **6.0 Recommendation**

**6.1 The Leaders are asked to note the contents of this report and provide comment to the Joint Governance Committee Meeting on 28th March 2017.**

## **Local Government Act 1972**

### **Background Papers:**

The Councils' Constitutions.

Local Government Act 1972.

The Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012.

The Local Authorities (Functions and Responsibilities) (England) Regulations 2000.

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## **Schedule of Other Matters**

### **1.0 Council Priority**

- 1.1 Executive Procedure Rules are part of the governance framework for the efficient operation of Council decision making.

### **2.0 Specific Action Plans**

- 2.1 No issues identified.

### **3.0 Sustainability Issues**

- 3.1 No issues identified.

### **4.0 Equality Issues**

- 4.1 No issues identified.

### **5.0 Community Safety Issues (Section 17)**

- 5.1 No issues identified.

### **6.0 Human Rights Issues**

- 6.1 No issues identified.

### **7.0 Reputation**

- 7.1 Sound decision making procedures, and governance arrangements, established in the Councils' Constitutions, enhance transparency and accountability in the decision making process, which has a positive impact on the public perception and reputation of the Councils.

### **8.0 Consultations**

- 8.1 Consultation is being undertaken, via this report, with both Leaders of Adur District Council and Worthing Borough Council. Feedback received from this consultation will be provided to the Joint Governance Committee when considering this matter, prior to their making a recommendation to each Full Council.

### **9.0 Risk Assessment**

- 9.1 Matter considered and no issues identified.

### **10.0 Health & Safety Issues**

- 10.1 Matter considered and no issues identified.

### **11.0 Procurement Strategy**

11.1 Matter considered and no issues identified.

**12.0 Partnership Working**

12.1 Adur District Council and Worthing Borough Council remain separate legal entities and retain separate Constitutions governing their operation. Entirely separate Executive Procedure Rules have therefore been produced for Adur District Council and Worthing Borough Council.